IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 19235 OF 2007

Dated : September 13, 2007

Between:

M.A.K.Jileni

Petitioner

AND

The General Manager,
S.C.Railway, Secunderabad and others.

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 19235 OF 2007

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

Seeking a writ of certiorari to call for the records relating to the order, dated 29.06.2007 passed in O.A. No. 236 of 2006 by the Central Administrative Tribunal, Hyderabad Bench, and to declare the same as illegal, discriminatory and violative of principles of natural justice and set aside the same including the orders passed by the second respondent in Lr. No. B/P90/I II/98/Loco/Appeal dated 12.02.2004 and Revisional Authority i.e. the fourth respondent in Lr. No.P.90/DAR/BZA/MAKJ/17/2000 dated 20.02.2007 and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits and back wages by treating the entire period of suspension from 25.1.1988 to 20.2.2007 as on duty, the petitioner filed this writ petition.

The petitioner filed the above O.A. before the Tribunal seeking reinstatement into service and back wages, protection of his seniority, promotion on par with his juniors and other consequential benefits.

Few facts, that are necessary for disposal of this writ petition, are that disciplinary proceedings were initiated against the petitioner for unauthorised absence of 438 days in two spells and, consequently, departmental enquiry was initiated against the petitioner, which culminated into removal of the petitioner from service. Assailing the said punishment, the petitioner preferred appeal, which also was dismissed and the revision preferred therefrom also

met with the same fate. Assailing the same, the petitioner filed OA No. 222 of 2002 and the Tribunal while affirming the findings of the Inquiry Officer, found that the punishment of removal from service is disproportionate to the gravity of the charge and consequently modified the punishment and imposed the punishment of withholding of two increments with cumulative effect for a period of three years and directed the respondents to reinstate the petitioner into service with all back wages and allowance.

The respondents herein challenged the said order in WP No. 12408 of 2003 and this court by order dated 7.11.2003 allowed the writ petition and remitted the matter back to the Appellate Authority for considering the quantum of punishment and regulate the period of absence and to pass appropriate order, after giving due opportunity to the petitioner. Consequently, the appellate authority while confirming the findings of the Inquiry Officer, reduced the punishment from removal of service to one of compulsory retirement. In so far as regularisation is concerned, the appellate authority found that since the charge for unauthorised absence was proved, the question of regularisation does not arise. The appellate authority treated the period of suspension as deemed suspension and confirmed the payment of 50% subsistence allowance.

Aggrieved thereby, the petitioner filed the above O.A. seeking the reliefs hereinbefore mentioned.

The Tribunal having considered the issue at length and having regard to the fact that earlier in OA No. 222 of 2001, the Tribunal has confirmed the findings of misconduct, which was also affirmed by this court in WP No. 12498 of 2003, has observed that the period of absence is not a small period and, therefore, upheld the punishment of compulsory retirement. The Tribunal also upheld the findings of the appellate authority that the petitioner is not entitled to regularisation of period of absence. It has also affirmed the finding that the petitioner is not entitled to full salary inasmuch as the charges were proved. Holding so, the O.A. was dismissed.

Aggrieved thereby, the present writ petition is filed contending that the petitioner suffered from severe chronic hepatitis and reported sick from 12.5.1985 to 11.10.1985 and also from 30.11.1985 to 10.9.1986, in all 438 days, and submitted medical certificates. It is the contention of the petitioner that when once the alleged unauthorised absence is treated as leave without pay, there is no misconduct on the part of the petitioner.

It is not in dispute that, in the earlier round of litigation, assailing the punishment of removal, the petitioner filed OA No. 222 of 2002 and the Tribunal while upholding findings of the Inquiry Officer, has substituted the punishment of removal from service to one of withholding two increments with cumulative effect for a period of three years and

directed reinstatement into service which all back wages and allowances. This order of the Tribunal was assailed in WP No. 12498 of 2003, by the respondents herein, and this court also affirmed the findings on the charges and the petitioner did not seek to assail the said order dated 7.11.2003 passed in the above writ petition. Therefore, the scope of this writ petition is quite limited to the extent of imposition of punishment. The appellate authority, having taken into account the facts and circumstances, has moderately imposed the punishment of compulsory retirement. Consequently, we do not find any reason to interfere with the said finding. However, having regard to the facts, we deem it appropriate to direct the respondents to consider the period of absence from 12.5.1985 to 11.10.1985 and also from 30.11.1985 to 10.9.1986 in all 438 days, on duty, only for the purpose of calculation of pension and pension shall accordingly be paid.

In view of the peculiar facts and circumstances of this case, this benefit is extended to the petitioner and, therefore, this shall not be cited as a precedent.

With this direction, the writ petition is disposed of. No order as to costs.

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T.MEENA KUMARI, J.

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G.CHANDRAIAH, J.

September 13, 2007
MAS.